

IN SENATE OF THE UNITED STATES.

FEBRUARY 2, 1848.

Submitted, and ordered to be printed.

Mr. WESTCOTT made the following

REPORT:

[To accompany bill S. No. 122.]

*The Committee on the Judiciary, to whom was referred the petition of Joseph De la Francia, report :*

That this case has been before Congress several times, and has been more than once formally reported upon. A bill similar to that now recommended in favor of petitioner passed the Senate of last session. The report, appended hereto, made by the Secretary of State in 1828 to the House of Representatives, sustains the justice of the claim to relief; and, besides additional evidence obtained since that report was made, and some since the former proceedings of Congress on the claim, has been adduced to this committee, and is filed with the papers strengthening and fortifying the equitable claim of the petitioner to the relief proposed to be granted by the bill now reported in his favor.

The report of the Secretary of State is as follows :

DEPARTMENT OF STATE,  
Washington, April 19, 1828.

The Secretary of State, to whom has been referred, by the House of Representatives, the petition of Joseph De la Francia, has the honor to report : That the petitioner claims, as the representative of Henry De la Francia, \$11,850, with 10 per cent. interest thereon, from the — day of December, 1810, for arms and munitions of war, which were sold by the said Henry De la Francia to Reuben Kemper, acting as the agent of the convention which revolted against the Spanish government in that part of West Florida claimed by the United States under the cession of Louisiana, and of which they subsequently received possession from the said convention ; that an act of Congress passed on the 18th April, 1814, by which it was enacted “ that the Secretary of State be, and he is hereby, directed to liquidate, according to principles of justice and equity, all the claims of the inhabitants of the late province of West Florida, now included within the limits of the State of Louisiana, or of the Mississippi Territory, for advances by them made, for

the use and benefit of the United States, prior to and since the taking of possession of the said portion of the said late province of West Florida by the United States;" that, in conformity with the provisions of that act, a number of claims were submitted, in 1817, to the then acting Secretary of State, and, amongst others, that of De la Francia; that a list of the claims which existed against the convention, payment of which, it was expected, would be assumed by the government of the United States, was furnished to the then Secretary of State by the convention, or by its authority; which list did not include that of De la Francia; that all the claims are believed to have been allowed, except his; that the acting Secretary of State rejected his claim, upon the ground, as it is understood, that the arms and ammunition sold by De la Francia to Kemper were not private property, but had been taken from the magazines of Spain, by whose arms they were, shortly after their sale and delivery to Kemper, recaptured; that this want of property in the arms and ammunition is not understood to have been established by positive testimony; but was supposed by the then Secretary to be probable, from the circumstances of the case; that the claim was, in 1824, again presented for liquidation and payment; and the then Secretary of State declining to act upon it, it was referred by the then President of the United States (who was the Secretary of State at the time of the passage of the act of Congress) to the Fifth Auditor, who adhered to the former decision that had been given against it; that, subsequent to the rejection of the claim, a suit was brought by the representative of De la Francia against Reuben Kemper, to render him personally responsible for the amount of the demand, and judgment was accordingly recovered against him; that, since the present Secretary of State has been in the department, the counsel of the claimant has several times mentioned the claim, and expressed a wish that the decision should be reviewed; that, with a view of obviating the difficulty which is supposed to have formerly been the chief cause of the rejection of the claim, some new evidence has been taken, to establish the right of property to the arms and ammunition to have been in Henry De la Francia; but that new evidence has not been examined, for reasons which will be hereafter stated.

That, under all the circumstances of the case, the present Secretary of State does not deem it his duty to re-examine and decide upon this claim without some new authority conferred upon him; that he considers the former decision of his predecessor as an execution of the trust created by the act of Congress; that, although the terms of the act are general and indefinite as to time, it is nevertheless believed that when the authority which they conveyed was assumed and exercised, not by a suspension of the demand for further evidence, but by a final decision, the case ought to be considered as much withdrawn from the power of the present Secretary as if the decision had been against the government, instead of being, as it was, against the claimant; that it would be a most mischievous practice for an officer of the government, at any distance of time, and without, at least, more extraordinary circumstances than

are believed to exist in this case, to open, and revise, and reverse a final decision of his predecessor ; that, moreover, the appropriations to carry into effect the provisions of the act of 1814 have been long since exhausted, and there is no existing appropriation applicable to the payment of this claim, if, upon reconsideration, it was thought proper to admit and pass it; that the late Secretary of State, in a letter under date the 22d April, 1824, addressed to the chairman of the Committee of Claims of the House of Representatives, in relation to a claim of Philemon Thomas, thus expresses himself: "The act of 18th April, 1814, to authorize the Secretary of State to liquidate certain claims therein mentioned, to which the committee are referred as having settled the principle on which this claim is founded, was, although general in its expressions, a personal trust, confided to the Secretary of State of that period, and has been considered as long since executed. As it vests a high and unusual discretionary power in the Secretary of State, I have never considered myself as authorized to act under it, except as directed by the President, to whom it had been originally given ;" that, without undertaking to decide absolutely whether the act of Congress did or did not create a trust, personal to the Secretary of State at the time being, the present Secretary conceives that he is forbidden, by all the circumstances of the case—but especially by those of the former decisions, the length of time which has elapsed, and the want of an appropriation—from regarding himself as authorized to allow this claim ; that he has no difficulty, at the same time, in stating that considerations of state, appertaining to the occupation of West Flodida in 1810, and to the act of Congress of the 18th April, 1814, which grew out of it, required the indulgence of liberality in the liquidation of the demands to which that act refers ; that, supposing the omission of the claim in question from the before-mentioned list to be satisfactorily accounted for, and the right of property to the arms and ammunition of De la Francia to be established, no adequate reason can be perceived why the same measure of justice which was extended to the other creditors of the convention should not be applied to the representative of De la Francia; that it has been stated that some new evidence has been recently taken to obviate the two last-mentioned objections, and that it was left by the counsel of the claimant at the Department of State several weeks ago; but, if it were so left, it has been mislaid, and cannot now be found ; consequently, no opinion can be expressed as to its weight or effect.

All which is respectfully submitted,

H. CLAY.

